

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LESLIE JAMES PICKERING,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant.

Complaint

1. This is an action under the Freedom of Information Act (FOIA), 5 USC §552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records pertaining to Leonard Peltier (hereinafter “Peltier”) that have been improperly withheld by defendant Department of Justice (hereinafter “DOJ”) and its component the Federal Bureau of Investigation (hereinafter “FBI”).

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 USC §552 (a) (4) (B). This Court also has jurisdiction over this action pursuant to 28 USC §1331. Venue lies in the district under 5 USC §552 (a) (4) (B).

Parties

3. Plaintiff Pickering is a proprietor of Burning Books, a Buffalo bookstore specializing in social justice struggles and state repression. He is also a Political Science and Sociology Lecturer at Niagara University.

4. Defendant DOJ is a Department of the Executive Branch of the United States Government, and includes component entity FBI. The DOJ is an agency within the meaning of 5 USC §552 (f) (1).

Facts

5. By letter dated February 17, 2018, addressed to the FBI, plaintiff requested copies of all records pertaining to Peltier.

6. By letter dated February 26, 2018, the FBI made plaintiff aware that his FOIA request of February 17, 2018 for records pertaining to Peltier had been received at FBI Headquarters for processing. See FOIPA Request No. 1396731-000.

7. By letter dated May 3, 2018, plaintiff filed an administrative appeal with the Office of Information Policy (hereinafter “OIP”), a DOJ component.

8. By letter dated May 29, 2018, OIP advised plaintiff that his administrative appeal had been received on May 10, 2018 and that it had been assigned number DOJ-AP-2018-005478.

9. By letter dated June 1, 2018, OIP denied plaintiff’s administrative appeal.

10. By letter dated July 5, 2018, the FBI notified plaintiff that there were 6,020 pages of records potentially responsive to his FOIA request and the cost of CD releases would amount to \$190.

11. By letter dated July 18, 2018, counsel for plaintiff expressed his willingness to pay the FBI \$190 for CD releases. To date, the FBI has yet to release the 6,020 pages of records potentially responsive to plaintiff’s FOIA request.

12. By letter dated July 31, 2018, the FBI advised plaintiff, among other things, that FOIA requests are processed in the order in which they are received.

13. By letter dated October 10, 2018, plaintiff filed an administrative appeal with OIP.

14. By letter dated October 30, 2018, OIP advised plaintiff that his administrative appeal had been received on October 23, 2018 and that it had been assigned number DOJ-AP-2019-000539.

15. Defendant failed to make a determination on plaintiff's administrative appeal as required by 5 USC §552 (a) (6) (A) (ii).

16. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.

17. Plaintiff has a right of prompt access to the requested records under 5 USC §552 (a) (3) (A) and defendant failed to conduct an adequate search for responsive records and has wrongfully withheld the sought-after information from plaintiff.

Requested Relief

Wherefore, plaintiff prays that this Court:

1. order defendant to conduct a search for any and all responsive records to plaintiff's request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the request;

2. order defendant to produce, by a date certain, any and all non-exempt records responsive to plaintiff's request and a Vaughn index of any responsive records withheld under claim of exemption;

3. enjoin defendant from continuing to withhold any and all non-exempt records responsive to plaintiff's request;

4. grant plaintiff an award of reasonable attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC §552 (a) (4) (E) (i); and

5. grant plaintiff such other relief as the Court may deem just and proper.

Dated: January 1, 2019

Respectfully submitted,

s/michael kuzma

Michael Kuzma, Esq.

Counsel for Plaintiff

1893 Clinton Street

Buffalo, NY 14206

(716) 822-7645

Kuzma_Michael@hotmail.com